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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/30/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/746,537

Applicant(s)

POSTMES, THEO

Examiner

Sharmila S. Gollamudi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 20-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Receipt of Amendment C received on July 14, 2003 is acknowledged. Claims 20-28 are pending in this application. Claims 1-19 are cancelled.

#### ***Response to Arguments***

Applicant argues that while Kerkvliet does disclose peroxide values for natural honey, it does not disclose that natural occurring honey necessarily contains peroxide. Applicant claims that this is not an inherent characteristic of honey.

Applicant's arguments have been fully considered but they are not persuasive. First the examiner points out page 5, last paragraph of instant specification wherein the applicant clearly states that the peroxide activity is a preferred embodiment of the invention only and not a critical feature. Applicant claims an edible composition for digestive disorders and WO is in the same field of endeavor and solves the same disorder with the same composition. Therefore, since the same results are suggested as applicant's, the burden shifts to the applicant to establish that the prior art does not possess the properties desired. Secondly, it is pointed out that Kerkvliet discloses that a zero value results from heating predominantly. Thus, it can be seen that zero values are from external forces imparted on the honey rather than the honey itself not possessing the property. The examiner points out that the prior art does not heat the honey. Third, the examiner points out that the applicant does not specify the honey utilized in the invention. If applicant asserts in a declaration form that this is not an inherent feature, then an enablement issues arises since it is a tedious process to test several honey

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samples to have the instant peroxide value and applicant has not provided the honey that one can use without undue experimentation.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 89/07399.**

WO 89/07399 discloses a compressed product for improving digestion containing 10-20% wheat bran, 30-40% wheat germ, and the amount of honey is equivalent to the mass of the dry ingredients (50%) (Note example 1 and pg. 3). The composition also contains hulled sunflower seeds (inherently contains pectin).

\* Note that honey inherently contains water content less than 17.5% by weight and instant hydrogen peroxide values since the honey utilized in WO is not heated.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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**Claims 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 optionally in further view of Kerkvliet (journal of agricultural Research 35 (3/4): 110-117 (1996)).**

WO 89/07399 discloses a compressed product for improving digestion containing 10-20% wheat bran, 30-40% wheat germ, and honey where the mass of the dry products is equivalent to the mass of the honey (50%) (Note example 1 and pg. 3). The composition also contains hulled sunflower seeds (inherently contains pectin). WO teaches making the product at a temperature of 30 degrees Celsius (page 4).

The references do not specify the inherent properties of honey.

Kerkvliet teaches that natural occurring honey has the enzyme glucose oxidase. Upon dilution of honey with water, hydrogen peroxide is liberated which in turn inhibits the growth of bacteria. The reference teaches specific peroxide activities for specific honey types. Kerkvliet demonstrates the influences of processing on honey and determined excessive heating during processing decreases peroxide value. The reference demonstrates the instant peroxide activity at 20 degrees Celsius after 60 minutes and at 35 degrees Celsius after 30 minutes. (Note entire document)

Although the references do not teach the peroxide activity of the honey used, it is deemed obvious to one of ordinary skill in the art that the honey used by WO has the instant properties since Kerkvliet teaches the inherent properties of honey and that natural occurring honey has peroxide values. Further, in the absence of evidence to the contrary, WO does not teach excessively heating the honey, therefore WO's honey

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would have the instant properties since Kerkvliet teaches that the only reason for a decreased peroxide value is due to excessive heating of honey during processing.

**Claims 22, 24, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 optionally in view of Kerkvliet (journal of agricultural Research 35 (3/4): 110-117 (1996), in further view of Aoe et al (5112964).**

As set forth above, WO teaches a honey composition for improving digestion. Kerkvliet teaches the inherent properties of honey.

WO does not teach cellulose as an additive in the composition.

Aoe et al teach dietary fibers such as hemicelluloses (found in wheat bran), pectin substances, and carboxymethylcellulose show physiological effects. These fibers prevent the absorption of toxic substances in the intestine and are removed with the elimination of the fiber. Further, the dietary fibers increase bowel movement. (Note col. 1, lines 1-35).

Further, It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate cellulose in WO's composition since Aoe teaches cellulose to have physiological advantages for the gastro-intestinal tract in aiding digestion and general health. One would be motivated to use another source of fiber such as carboxymethylcellulose (instant additive) to yield an additive effect.

**Claims 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,571,251 in view of Leach (5,612,074).**

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GB discloses a food composition containing 25% wheat bran, 20% honey, and dried apricots, among other components. The reference discloses that the addition of bran prevents constipation (col. 1, lines 20-25). GB discloses that the absence of cereal fiber is the cause of various diseases such as heart disease, intestinal ailments, cancer, obesity, etc. (col. 1, lines 35-50). GB prepares the mixture without heat (example 1).

GB does not teach the inclusion of wheat germ in the composition.

Leach teaches a nutrient fortified food bar containing dietary fiber, non-animal protein, carbohydrates, and sugars. Leach teaches adding about 38% of dietary fiber from various sources such as wheat germ, oatmeal, or dried fruits (apricots, cherries, dates, etc.) Further, Leach teaches wheat germ as a source of protein. (col. 3, lines 1-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the references and include wheat germ into the nutritional composition. One would be motivated to substitute dried apricots for wheat germ or add wheat germ since Leach teaches wheat germ and dried fruits provide essential dietary fibers and are interchangeable. Additionally, wheat germ not only provides dietary fiber but also provides protein. Note the limitation of 10 is met by GB's inclusion of dried fruit in the composition since fruit inherently contains pectin.

**Claims 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,571,251 in view of Leach (5,612,074) optionally in further view of Kerkvliet (Journal of Agricultural Research 35 (3/4): 110-117 (1996)).**

Art Unit: 1616

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contrary, GB does not teach heating the honey, therefore WO's honey would have the instant properties since Kerkvliet teaches that the only reason for a decreased peroxide value is due to excessive heating of honey during processing.

***Art of Interest***

The examiner cites Paetzke's What is Honey as art of interest, which also teaches the inherent properties of honey. Paetzke teaches that on average honey has a water content of 17.1% water and has hydrogen peroxide values. (Note page 6)

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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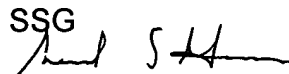
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SSG

9/25/02



  
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